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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 245

THE CITY OF GREENVILLE ET AL., APPELLANTS,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, CONSTITUTING THE STATE TAX COMMISSION OF SOUTH CAROLINA.

STATEMENT OF JURISDICTION.

P. F. HENDERSON,
B. A. MORGAN,
SHEPHARD K. NASH,
JAMES M. LYNCH,
Counsel for Appellants.

(36,059)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 245

THE CITY OF GREENVILLE, A MUNICIPAL CORPORATION UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA; THE CITY OF SUMTER, A MUNICIPAL CORPORATION UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA; THE CITY OF FLORENCE, A MUNICIPAL CORPORATION UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, AND THE COUNTY OF SUMTER, A MUNICIPAL CORPORATION UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, APPELLANTS,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, CONSTITUTING THE STATE TAX COMMISSION OF SOUTH CAROLINA, APPELLEES.

APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA.

STATEMENT OF JURISDICTION.

In compliance with Rule 12 of this Court appellants submit herewith their statement showing the basis of this Court's jurisdiction in the above-entitled cause.

A.

Statutes.

The statutory provisions relied upon to sustain jurisdiction are those allowing an appeal to the Supreme Court of the United States from the final judgment or decree in any suit in the highest court of a State in which a decision in said suit could be had, wherein is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution or laws of the United States and the decision is in favor of its validity (which statutes are set out as an appendix to the Rules of this Court adopted June 5, 1928), to wit, the Acts of February 13, 1925, c. 229, 43 Stat. 936, January 31, 1928, c. 14, 45 Stat. 54, and April 26, 1928, c. 440, 45 Stat. 446.

B.

Decree.

The final decree and judgment sought to be reviewed on this appeal was entered by and in the Supreme Court of South Carolina on the 13th day of April, 1931 (R. 19).

The petition for appeal (R. 24) was filed and the order allowing the appeal was entered and filed on the 8th day of July, 1931 (R. 26).

C.

Nature of the Case and Rulings Below.

This suit (R. 1) was brought in the original jurisdiction of the Supreme Court of South Carolina to

enjoin permanently (and *pendente lite*) the appellees personally and as members of the South Carolina Tax Commission from the threatened immediate enforcement of a tax levied by the Act of the Legislature of the State of South Carolina approved April 4, 1930 (Acts of 1930, p. 1390). Said act purports to impose a license tax of six cents per galion on all gasoline "imported" into the State of South Carolina "from any other State or foreign country" and stored in South Carolina for twenty-four hours before its use by its importer. The act provides no means of paying the tax under protest and of recovering the same by action at law or by any other manner. A Justice of the Supreme Court of South Carolina granted an interlocutory injunction. The matter was later heard upon its merits before the whole court and on April 13, 1931, the court rendered final judgment refusing the permanent injunction sought, dismissing the complaint, and granting judgment absolute against these appellants.

Appellants' claim, as revealed by their complaint, was that the License Tax Act in question was repugnant to the commerce clause of the Federal Constitution (Article 1, Section 8, Clause 3), in the following particulars, namely:

(1) That the act in question burdens Interstate Commerce.

(*a*) In that it makes the interstate origin of the gasoline in question the basis of the classification in the imposition of a tax, and thereby burdens the importation of the gasoline in interstate commerce.

(*b*) In that the act in question levies a tax on gasoline bought outright by the plaintiffs before its shipment in interstate commerce, which gasoline is not to be resold and is, in fact, not resold within the State of South Carolina.

(*c*) In that the tax as a license tax is unconstitutional and is repugnant to the commerce clause of the Federal Constitution, because it makes both the act of storing the gasoline within the State of South Caroline and its importation in interstate commerce the joint acts which give rise to the license tax imposed, it being submitted that a license cannot be laid in part upon interstate commerce.

(2) That the act in question is repugnant to the commerce clause of the Federal Constitution in that it discriminates against gasoline produced by other States and places a license tax by its terms only upon citizens of this State who import and store gasoline so imported from other States, it being a fact that South Carolina produces gasoline in refineries situated within her borders.

The foregoing are the Federal questions presented to the Supreme Court of South Carolina, all of which positions were overruled and disregarded by said court.

D.

Cases Relied on to Sustain the Jurisdiction.

(*a*) Appeal is the proper procedure:
Blodgett *vs.* Silberman, 277 U. S. 1.
Nashville, etc., Railway *vs.* White, 278 U. S. 456.
Great Northern Railway *vs.* Minnesota, 278 U. S. 503.

(*b*) Under the commerce clause:

Standard Oil Company *vs.* Graves, 249 U. S. 389.
Askren *vs.* Continental Oil Co., 252 U. S. 444.
Bowman *vs.* Oil Company, 256 U. S. 646.
Texas Company *vs.* Brown, 258 U. S. 470.
Sonneborn *vs.* Cureton, 262 U. S. 513.
Hart Refineries *vs.* Harmon, 278 U. S. 499.

(*c*) As to license tax laid partly on interstate commerce:

Bowman *vs.* Continental Oil Co., 256 U. S. 646.
Leloup *vs.* Port of Mobile, 127 U. S. 641.
Crutcher *vs.* Kentucky, 141 U. S. 47.
Williams *vs.* Talladega, 226 U. S. 404.

(*d*) As to repugnancy to both commerce clause and equal-protection clause:

Bethlehem Motor Corporation *vs.* Flint, 256 U. S. 421.
Darnell *vs.* Memphis, 208 U. S. 113.
Boyce *vs.* French, 292 Fed. 43.

We respectfully submit that the Court has jurisdiction of this appeal by virtue of the statutory provisions hereinabove designated.

Respectfully submitted,

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B. A. MORGAN,
SHEPHARD K. NASH,
JAMES M. LYNCH,
Solicitors for Appellants.